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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

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FILE: B-193470

DATE: January 15, 1979

MATTER OF: U. S. Royal Maintenance

DIGEST: [Bidder May Withdraw Bid]

Where evidence establishes mistake in bid but does not establish intended bid, agency properly permitted bidder to withdraw but not correct its bid.

U. S. Royal Maintenance (U. S. Royal) protests the award of a contract for janitorial services by the Naval Facilities Engineering Command under IFB N62474-78-B-0506 to any bidder other than itself. U. S. Royal was the incumbent contractor for these services. The basis of the protest is that the Navy refused to permit the correction of an error in bid although it did allow U. S. Royal to withdraw its bid.

Bids for the IFB were opened on August 29, 1978 with the following pertinent results:

U. S. Royal Maintenance Co.	\$19,953.64
Franco Building Maintenance	\$23,556.60

Due to the disparity between the U. S. Royal bid and the Navy's \$25,000 estimate, U. S. Royal was requested to review and confirm its bid. On September 25, 1978, U. S. Royal asserted an error in its bid in the amount of \$1,446.36 and requested that its bid be corrected to \$22,842.36. According to the protester the \$1,446.36 represents an estimate for financing charges and overhead that was to be added to the preceding year's contract price of \$21,398.00. U. S. Royal claims that in preparing the bid, instead of adding the \$1,446.36 to the prior year's price, a U. S. Royal employee erroneously subtracted that amount to arrive at the \$19,953.64 bid for the current requirement. In support of its protest and request for bid correction, U. S. Royal has provided us with two affidavits, the bid worksheet, and the adding machine tape used in preparing the bid.

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As a result of its review of the asserted error the Navy concluded that there was sufficient evidence submitted to indicate that an error was made, but the evidence was not clear and convincing as to the bid actually intended. Thus the Navy permitted the protester to withdraw but not to correct its bid, and award was made to Franco Building Maintenance (Franco) as the next low responsible bidder.

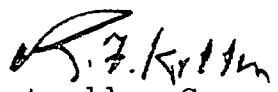
Our review of the evidence provided to us by U. S. Royal does not show how the protester arrived at the \$1,444.36 "estimate." That amount appears on the worksheet in the form of a note, without support which would indicate the basis for the estimate. Further, the worksheets fail to indicate with certainty how the protester computed the \$21,398 yearly cost shown, which is the same amount as the prior year's contract price. For example, the \$21,398 shown on the worksheet is calculated on the basis of a monthly cost of \$1,783.16, consisting of \$976.80 (the purported sum of various cost categories such as basic wage rates, insurance, etc.) for a janitor working a 30 hour week, and a \$806.36 "self employed" rate (which includes gross profit). However, the various cost categories attributable to the required janitor equal \$981.60, and the source of the \$806.36 "self employed" rate is not so clear from the worksheet.

✓ To be allowed correction of an error in bid asserted prior to award, where another bidder will not be displaced as a result of the correction, the bidder must show by clear and convincing evidence that an error has been made, the manner in which the error occurred, and the intended bid price. E. Walters & Company, Inc., B-192346, September 25, 1978, 78-2 CPD 228. This standard of proof is specified in Defense Acquisition Regulation (DAR) 2-406.3(a)(2) (1976 ed.). A bidder requesting correction is required to establish clearly and convincingly the actual bid intended because it would obviously be unfair to other bidders and detrimental to the integrity of the competitive bidding system to allow the bidder, after bid opening, to first determine what bid price it should have submitted. Western States Construction Company, Inc., B-191209, August 29, 1978, 78-2 CPD 149. In this respect, the authority to correct mistakes alleged after

bid opening but before award has been delegated to the procuring agency and the weight to be given to the evidence in support of an alleged mistake is a question of fact to be considered by the administratively designated evaluator of evidence, whose decision will not be disturbed by this Office unless there is no reasonable basis for the decision. J. W. Creech, B-191177, March 8, 1978, 78-1 CPD 186. Under the circumstances here, even though only minor sums are involved, we believe that the Navy's determination that the evidence presented was not clear and convincing as to the bid actually intended was reasonable.

We also note that if the upward correction of the U. S. Royal bid were permitted, the bid would be only \$714.24 lower than the Franco bid. We have denied correction, regardless of the good faith of the party or parties involved, where there exists any reasonable basis for argument that the public confidence in the competitive bidding system would be adversely affected thereby. See 48 Comp. Gen. 748 (1969). We think this case falls within the ambit of the foregoing rule because of the insignificant difference between the two bids which would result from correction. See Broken Lance Enterprises, Inc., 56 Comp. Gen. 1 (1976), 76-2 CPD 314.

> The protest is denied.


Deputy Comptroller General
of the United States